



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 13, 2005

Mr. Ernesto Rodriguez
Assistant City Attorney
City of El Paso
2 Civic Center Plaza, 9th Floor
El Paso, Texas 79901

OR2005-05179

Dear Mr. Rodriguez:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 226270.

The El Paso Police Department (the "department") received a request for a copy of the video of a polygraph examination of the requestor. You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note that section 1703.306 of the Occupations Code governs access to information obtained during the course of a polygraph examination and provides in pertinent part:

(a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person other than:

(1) the examinee or any other person specifically designated in writing by the examinee[.]

Occ. Code § 1703.306(a)(1). Here, the requestor is the examinee. Section 1703.306(a)(1) expressly provides an examinee with access to information acquired from the examinee's

polygraph examination. *See id.* Accordingly, the requestor in this case has a specific right of access to the requested video of the polygraph examination pursuant to section 1703.306(a)(1) of the Occupations Code. Because the specific right of access granted by the statute controls, the department may not withhold the polygraph information from the requestor pursuant to the exception you have raised. *See generally* Open Records Decision No. 525 (1989)(exceptions to disclosure do not apply to information made public by other statutes).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Louis T. Dubuque", written in a cursive style.

Louis T. Dubuque
Assistant Attorney General
Open Records Division

LTD/seg

Ref: ID# 226270

Enc. Submitted documents

c: Mr. Ronald Martin
911 Raynor
El Paso, Texas 79903
(w/o enclosures)